

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY FLOYD,

Case No. 15-11337

Plaintiff,

Linda V. Parker

v.

United States District Judge

PRICE WEST,

Stephanie Dawkins Davis

United States Magistrate Judge

Defendant.

**REPORT AND RECOMMENDATION FOR DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 4(m)**

Plaintiff filed a complaint against defendant Price West, claiming defendant distributed and sold plaintiff's CD, titled "God Is Calling You," without his permission and in violation of plaintiff's copyright. (Dkt. 1). The case was referred to Magistrate Judge Michael Hluchaniuk for all pretrial purposes by District Judge Linda V. Parker. (Dkt. 12). This matter was reassigned to the undersigned for all pretrial purposes by way of a text-only order entered January 7, 2016.

A Summons issued for Price West on May 1, 2015. (Dkt. 8). The United States Marshals Service attempted service of that Summons but it was returned unexecuted due to insufficient address. (Dkt. 10, 11). On November 25, 2015, the Court ordered plaintiff to provide the correct address for defendant Price West by

December 30, 2015. (Dkt. 13). After a review of the docket indicated that plaintiff had not provided the address for service, the Court issued an order to show cause, in writing, by May 31, 2016, why the undersigned should not recommend dismissal under Rule 4(m) for failure to provide the correct address so that service could be effectuated in a timely fashion. (Dkt. 15). The Court's Order specifically stated that: **"Failure to satisfactorily or timely comply with this order will result in a recommendation that the action against defendant Price West should be dismissed pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 41.2."** (*Id.*). To date, plaintiff has not filed a response to the Court's May 10, 2016 Order to Show Cause. Nor, in the intervening period, has plaintiff provided the Court with an address for defendant.

The time for service of the summons and complaint is established under Federal Rule of Civil Procedure 4(m), which provides that service must be made within 120 days after the filing of the complaint. "If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). At this time, service has not been effected on the defendant within the time allotted under Rule 4(m), and plaintiff has not shown good cause to extend the time for service at this juncture. Accordingly, this action should be dismissed

without prejudice.

For the reasons set forth, the undersigned **RECOMMENDS** that plaintiff's complaint against defendant be **DISMISSED** without prejudice under Federal Rule of Civil Procedure 4(m).

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d).

The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: August 3, 2016

s/Stephanie Dawkins Davis
Stephanie Dawkins Davis
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on August 3, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system and have mailed by United States Postal Service to the following non-ECF participant: Anthony Floyd, 4742 Alter, Detroit, MI 48215.

s/Tammy Hallwood
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